

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAMONTE A. EALY,

Plaintiff,

v.

Case No. 23-cv-1650-bhl

JANE DOE, et al.,

Defendants.

ORDER

Plaintiff Lamonte A. Ealy, who is currently serving a state prison sentence at the Green Bay Correctional Institution and representing himself, filed a complaint under 42 U.S.C. §1983, alleging that his civil rights were violated. This matter comes before the Court on Ealy's motion for leave to proceed without prepayment of the filing fee, motion to substitute the judge, and motion for leave to file an amended complaint. Dkt. Nos. 2, 7, & 8.

On December 8, 2023, Ealy filed a motion for leave to proceed without prepayment of the filing fee (*in forma pauperis*). Dkt. No 2. A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. §1915(b)(1). Ealy has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. §1915(a)(2), and has been assessed and paid an initial partial filing fee of \$13.41. Therefore, the Court will grant Ealy's motion for leave to proceed without prepayment of the filing fee.

On December 27, 2023, Ealy filed a motion to substitute the judge. Dkt. No. 7. Ealy explains that this Court recently presided over his *habeas* case and entered an "erroneous ruling;"

therefore, he believes that there may be a “conflict of interest.” *Id.* Ealy states that he prefers the magistrate judge that he consented to on December 13, 2023. *Id.* It is this district’s practice to assign one judge to multiple lawsuits filed by the same prisoner. There is no “conflict of interest” based on Ealy’s disappointment with the result of his *habeas* petition. Therefore, the Court will deny Ealy’s motion to substitute the judge. If Defendants also consent to a magistrate judge later in the case, this case may be reassigned to a different judge for that reason.

On January 19, 2024, Ealy filed a motion for leave to file an amended complaint, along with a proposed amended complaint. Dkt. No. 8. The proposed amended complaint is problematic and cannot be accepted for two reasons. First, most of the document is illegible and the Court cannot adequately interpret the document for purposes of screening it. *See* Dkt. No. 8-1. Second, the portions of the document that are legible indicate that it contains “additional details in support of an additional claim” that was not raised in the original complaint. *Id.* at 2. But as the Seventh Circuit has long held, an amended complaint must be complete itself without reference to prior versions of the complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). In *Duda*, the appellate court emphasized that in such instances, the “prior pleading is in effect withdrawn as to all matters not restated in the amended pleading.” *Id.* at 1057 (citation omitted). In other words, Ealy cannot add claims and defendants he forgot to raise in the original complaint through a proposed amended complaint. Therefore, the Court will deny Ealy’s motion for leave to file an amended complaint to the extent he wishes to proceed on his proposed amended complaint. However, given that the Court has not yet screened the original complaint, the Court will give him 30 days to submit an amended complaint that complies with this order and contains all of the facts, claims, and defendants he wishes to proceed

on through this lawsuit. Ealy is additionally advised to use a dark colored pen to draft his amended complaint.

The Court is enclosing a guide for *pro se* prisoners that explains how to file an amended complaint that the Court can effectively screen. The Court also will include a blank prisoner amended complaint form. The Court will require Ealy to use that form to file his amended complaint. *See Civ. L. R. 9 (E.D. Wis.).* If Ealy believes he needs more space than is available in blank prisoner amended complaint form, he may attach a *maximum* of five typed, double-spaced pages. The amended complaint should be no more than ten pages total. If Ealy files an amended complaint, the Court will screen it as required by 28 U.S.C. §1915A. If Ealy does not file an amended complaint, the Court will screen the original complaint.

IT IS THEREFORE ORDERED that Ealy's motion for leave to proceed without prepayment of the filing fee (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that the agency having custody of Ealy shall collect from his institution trust account the **\$336.59** balance of the filing fee by collecting monthly payments from Ealy's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If Ealy is transferred to another institution, the transferring institution shall forward a copy of this Order along with Ealy's remaining balance to the receiving institution.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where Ealy is located.

IT IS FURTHER ORDERED that Ealy's motion to substitute the judge (Dkt. No. 7) is **DENIED**.

IT IS FURTHER ORDERED that Ealy's motion for leave to file an amended complaint (Dkt. No. 8) is **DENIED in part and GRANTED in part**. The motion is denied to the extent Ealy wishes to proceed on his proposed amended complaint. The motion is granted to the extent Ealy may file an amended complaint that complies with the instructions in this order **by February 26, 2024**. If Ealy files an amended complaint, the Court will screen it as required by 28 U.S.C. §1915A. If Ealy does not file an amended complaint, the Court will screen the original complaint.

IT IS FURTHER ORDERED that the Clerk's Office mail Ealy a blank prisoner amended complaint form and a copy of the guide entitled "Guide to Filing Prisoner Complaints Without a Lawyer in the United States District Court for the Eastern District of Wisconsin," along with this order.

Dated at Milwaukee, Wisconsin on January 26, 2024.

s/ Brett H. Ludwig
BRETT H. LUDWIG
United States District Judge